

CONTENTS

| | |
|---|--------------|
| <i>Preface</i> | <i>xxi</i> |
| <i>Acknowledgments</i> | <i>xxiii</i> |
| CHAPTER 1 | |
| The Federal Court System: Structure and Themes | 1 |
| A. The Federal Court System in Historical Perspective | 1 |
| 1. The Federal Courts in the Constitutional Generation | 1 |
| a. The Articles of Confederation | 2 |
| b. Establishing a National Court and Discretion for Congress to Create Lower Federal Courts | 3 |
| c. A Limited Historical Record of the Framers' "Original Intentions" | 5 |
| d. Public Debates after the Constitutional Convention | 6 |
| e. Ratification | 8 |
| f. Judicial Federalism and the Continued Existence of State Courts | 8 |
| g. The Judiciary Act of 1789 | 9 |
| 2. The Development and Growth of the Federal Court System | 10 |
| B. The Federal Courts Today (and Tomorrow) | 13 |
| 1. The Evolving Judicial Role | 14 |
| 2. Improving Federal Court Systems through Judicial Independence | 15 |
| C. Recurring Themes and Questions | 15 |
| 1. Federalism | 16 |
| 2. Separation of Powers | 17 |
| 3. Parity | 17 |
| 4. Judicial Review in the Context of Limited Jurisdiction | 18 |
| <i>Marbury v. Madison</i> | 19 |
| CHAPTER 2 | |
| Justiciability and the Judicial Function | 29 |
| A. A Reference Problem | 29 |
| B. Context and Background | 31 |
| C. The Law and Problems | 33 |
| 1. The Prohibition on Advisory Opinions | 33 |

| | |
|--|----|
| 2. Standing | 34 |
| a. The Constitutional and Prudential Parameters of Standing | 35 |
| b. Focus: Traditional Standing vs. Special Solicitude Standing for States | 39 |
| <i>Massachusetts v. Environmental Protection Agency</i> | 39 |
| c. Classic Standing Analysis Revisited | 50 |
| d. Focus: Generalized Grievance Prohibition and Standing as a Citizen and Taxpayer | 52 |
| <i>Hein v. Freedom from Religion Foundation, Inc.</i> | 52 |
| 3. Ripeness | 66 |
| <i>Abbott Laboratories v. Gardner</i> | 66 |
| 4. Mootness | 70 |
| <i>Defunis v. Odegaard</i> | 72 |
| 5. Political Question | 78 |
| <i>Nixon v. United States</i> | 79 |
| D. Some Additional Problems | 92 |

CHAPTER 3

Congressional Control of Federal Jurisdiction and Decisionmaking

| | |
|--|-----|
| | 95 |
| A. A Reference Problem | 95 |
| B. Context and Background | 98 |
| 1. Constitutional Text | 98 |
| 2. The Framers' Debate | 99 |
| 3. Interbranch Tension | 99 |
| 4. Competing Approaches to Congressional Jurisdictional Role | 100 |
| 5. The Role of Federalism | 101 |
| C. The Law and Problems | 102 |
| 1. Control of Jurisdiction | 102 |
| a. The Supreme Court's Appellate Jurisdiction | 104 |
| <i>Ex parte McCardle</i> | 104 |
| <i>Ex parte Yerger</i> | 108 |
| b. The Inferior Federal Courts | 113 |
| <i>Sheldon v. Sill</i> | 114 |
| <i>Yakus v. United States</i> | 117 |
| <i>Battaglia v. General Motors Corp.</i> | 124 |
| 2. Control of Decisionmaking | 134 |
| <i>United States v. Klein</i> | 135 |
| <i>Plaut v. Spendthrift Farm, Inc.</i> | 142 |
| D. Some Additional Problems | 163 |

CHAPTER 4

Allocation of Jurisdiction to Non-Article III Tribunals

| | |
|---------------------------|-----|
| | 167 |
| A. A Reference Problem | 167 |
| B. Context and Background | 169 |
| C. The Law and Problems | 171 |

| | |
|---|-----|
| 1. Assignment of Judicial Business to Non-Article III Tribunals | 171 |
| <i>Northern Pipeline Construction Co. v. Marathon Pipe Line Co.</i> | 172 |
| a. Legislative or Article I Courts | 198 |
| b. Article III Adjuncts | 203 |
| c. Administrative Agencies | 206 |
| <i>Thomas v. Union Carbide Agricultural Products Co.</i> | 207 |
| <i>Commodity Futures Trading Comm'n v. Schor</i> | 216 |
| 2. Assignment of Non-Article III Matters to Article III Courts | 232 |
| a. Assignment of Non-Judicial Tasks to Article III Courts | 233 |
| b. Assignment of the Adjudication of Cases to Article III Courts Outside the Scope of the Jurisdictional Grants in Article III, Section 2 | 234 |
| D. Some Additional Problems | 235 |

CHAPTER 5
Arising Under Jurisdiction **239**

| | |
|---|-----|
| A. A Reference Problem | 239 |
| B. Context and Background | 241 |
| C. The Law and Problems | 242 |
| 1. The Constitutional Scope of Arising Under Jurisdiction | 242 |
| a. The Basic Rule | 242 |
| <i>Osborn v. Bank of the United States</i> | 243 |
| b. Where Is the Constitutional Frontier? | 250 |
| <i>Textile Workers Union of America v. Lincoln Mills of Alabama</i> | 251 |
| 2. The Statutory Scope of Arising Under Jurisdiction | 258 |
| a. Where (and How) to Look: The Well-Pleaded Complaint Rule | 259 |
| <i>Louisville & Nashville Railroad Co. v. Mottley</i> | 259 |
| b. What to Look For? | 264 |
| <i>American Well Works Co. v. Layne & Bowler Co.</i> | 264 |
| <i>Merrell Dow Pharmaceuticals, Inc. v. Thompson</i> | 271 |
| <i>Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing</i> | 282 |
| c. Where (and How) to Look Redux: Declaratory Judgments | 292 |
| <i>Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California</i> | 293 |
| D. Some Additional Problems | 305 |

CHAPTER 6
Diversity Jurisdiction **309**

| | |
|--------------------------------|-----|
| A. A Reference Problem | 309 |
| B. Context and Background | 311 |
| 1. Why Diversity Jurisdiction? | 311 |
| 2. Plan of Coverage | 313 |

| | |
|--|-----|
| C. The Law and Problems | 314 |
| 1. The Framers' Intent(s) | 314 |
| a. Diversity to Protect Non-Citizen Litigants: The "Orthodox" Interpretation | 316 |
| b. Diversity to Restrain or Prevent the Application of State Law | 317 |
| c. Diversity to Restrain the Jury: New Insights | 320 |
| d. A Note on Alienage Jurisdiction | 329 |
| 2. Implementation of Conventional Diversity Jurisdiction | 330 |
| 3. Evolution in Diversity Doctrine | 332 |
| a. Corporations and Diversity | 334 |
| b. The Continuing Debate over the Value of Conventional Diversity Jurisdiction | 336 |
| 4. Diversity Jurisdiction Receives New and Controversial Life | 341 |
| a. The Multiparty, Multiforum Trial Jurisdiction Act | 343 |
| b. The Class Action Fairness Act of 2005 | 346 |
| 5. In Search of Limits to Diversity Jurisdiction | 354 |
| D. Some Additional Problems | 359 |

CHAPTER 7

Expanding the Constitutional "Case" Through Supplemental Jurisdiction and Removal Jurisdiction 361

| | |
|---|-----|
| A. A Reference Problem | 361 |
| B. Context and Background | 363 |
| 1. Augmenting the Jurisdiction of Federal Trial Courts | 363 |
| 2. Plan of Coverage | 365 |
| a. Supplemental Jurisdiction | 365 |
| b. Removal Jurisdiction | 365 |
| C. The Law and Problems | 366 |
| 1. Supplemental Jurisdiction | 366 |
| a. The Constitutional Foundation of Supplemental Jurisdiction | 366 |
| <i>United Mine Workers of America v. Gibbs</i> | 368 |
| b. The Emerging Importance of Congressional Intent | 372 |
| <i>Finley v. United States</i> | 373 |
| c. Congress Responds to the Court | 381 |
| d. Integrating Supplemental Jurisdiction and Federal Procedural Rules | 383 |
| e. Counterclaims and Supplemental Jurisdiction — A Constitutional Borderland? | 389 |
| <i>Sparrow v. Mazda American Credit</i> | 389 |
| f. The Consequences of Dismissal Under Section 1367(c) | 401 |
| 2. Removal Jurisdiction | 403 |
| a. Removal Under 28 U.S.C. § 1441(a) | 404 |
| b. Removal Under 28 U.S.C. § 1441(c) | 405 |
| <i>Salei v. Boardwalk Regency Corp.</i> | 408 |
| c. Other Removal Statutes | 415 |
| D. Some Additional Problems | 417 |

| | |
|--|------------|
| CHAPTER 8 | |
| The Eleventh Amendment and State Sovereign Immunity | 419 |
| A. A Reference Problem | 419 |
| B. Context and Background | 422 |
| C. The Law and Problems | 424 |
| 1. The Foundations and Scope of Constitutional State Sovereign Immunity | 424 |
| a. The Historical Backstory to Modern Doctrine | 424 |
| <i>Hans v. Louisiana</i> | 425 |
| b. What Entities Are Entitled to Sovereign Immunity from Suit in Federal Court? | 437 |
| 2. Ways to Avoid Sovereign Immunity from Suit in Federal Court | 438 |
| a. The State: Waiver of Immunity and Consent to Suit | 438 |
| b. The Plaintiff: Suits Against State Officials | 440 |
| <i>Ex parte Young</i> | 440 |
| <i>Edelman v. Jordan</i> | 450 |
| c. The Congress: Abrogation of Immunity | 460 |
| <i>Fitzpatrick v. Bitzer</i> | 460 |
| <i>Seminole Tribe of Florida v. Florida</i> | 465 |
| 3. A Return to the Scope of Constitutional State Sovereign Immunity: Expansion and Some Surprising Possible Retrenchment at the Dawn of the Twenty-First Century | 492 |
| <i>Central Virginia Community College v. Katz</i> | 494 |
| D. Some Additional Problems | 507 |
| | |
| CHAPTER 9 | |
| The Special Case of Section 1983 | 513 |
| A. A Reference Problem | 513 |
| B. Context and Background | 515 |
| 1. Recurring Themes and New Themes | 516 |
| 2. Plan of Coverage | 518 |
| C. The Law and Problems | 519 |
| 1. When Do Violators of Federal Law Act “Under Color of” State Law? | 519 |
| <i>Monroe v. Pape</i> | 520 |
| 2. Under What Circumstances Are Individuals Immune from Damages? | 529 |
| <i>Harlow v. Fitzgerald</i> | 530 |
| <i>Anderson v. Creighton</i> | 539 |
| 3. Under What Circumstances Are Individuals Absolutely Immune from Suit? | 547 |
| <i>Bogan v. Scott-Harris</i> | 548 |
| <i>Buckley v. Fitzsimmons</i> | 552 |

| | |
|---|-----|
| 4. Under What Circumstances Are Government Entities Liable for Damages? | 558 |
| <i>Monell v. Department of Social Services</i> | 559 |
| <i>Pembaur v. City of Cincinnati</i> | 570 |
| <i>City of St. Louis v. Praprotnick</i> | 578 |
| <i>City of Canton v. Harris</i> | 583 |
| 5. Which Constitutional Rights Are Enforceable Under Section 1983? | 591 |
| <i>Zinerman v. Burch</i> | 596 |
| 6. Which Federal Statutory Rights Are Enforceable Under Section 1983? | 606 |
| <i>Gonzaga University v. Doe</i> | 608 |
| 7. When May a Party Recover Attorneys' Fees? | 610 |
| <i>Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources</i> | 613 |
| 8. Does Section 1983 Law Vary When Applied by a State Court? | 619 |
| D. Some Additional Problems | 621 |

CHAPTER 10

Protecting State Courts from Interference by Federal Courts

| | |
|--|------------|
| | 625 |
| A. A Reference Problem | 625 |
| B. Context and Background | 628 |
| 1. Tension in the Exercise of Jurisdiction by Federal and State Courts | 628 |
| a. State Courts as Expositors of State Law | 629 |
| b. State Courts as Efficient Dispute-Resolution Tribunals | 629 |
| c. Protecting the Integrity of State Courts | 630 |
| 2. Plan of Coverage | 630 |
| C. The Law and Problems | 632 |
| 1. The Anti-Injunction Act | 632 |
| a. What the Act Prohibits | 632 |
| b. Express Exceptions to the Act | 633 |
| <i>Mitchum v. Foster</i> | 635 |
| c. Exceptions to Protect Federal Court Jurisdiction or Judgments | 638 |
| <i>Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers</i> | 641 |
| 2. <i>Pullman</i> Abstention | 646 |
| <i>Railroad Commission of Texas v. Pullman Company</i> | 647 |
| <i>England v. Louisiana State Board of Medical Examiners</i> | 651 |
| 3. <i>Younger</i> Abstention | 655 |
| <i>Younger v. Harris</i> | 656 |
| a. <i>Younger</i> Abstention, Standing, and Anticipatory Federal Relief | 663 |
| <i>Steffel v. Thompson</i> | 664 |

| | |
|--|-----|
| b. <i>Hicks v. Miranda</i> and a “Race to the Court” | 669 |
| c. <i>Younger’s</i> Impact on Federal Court Suits Seeking Damages | 673 |
| d. <i>Younger</i> Abstention and State Civil Proceedings | 674 |
| <i>Trainor v. Hernandez</i> | 676 |
| 4. Other Forms of Abstention | 687 |
| a. <i>Burford</i> Abstention | 688 |
| b. <i>Colorado River</i> Abstention | 690 |
| <i>Colorado River Water Conservation District v. United States</i> | 691 |
| 5. A Final Note on “Full Faith and Credit” | 698 |
| D. Some Additional Problems | 700 |

CHAPTER 11
The Federal Courts’ Power to Make Law **703**

| | |
|--|-----|
| A. A Reference Problem | 704 |
| B. Context and Background | 705 |
| 1. The Common Law Tradition in the Framers’ Era | 705 |
| 2. The Political Struggle over the Role of Common Law in Early Federal Courts | 707 |
| 3. The Continuing Role for Common Law in Federal Courts | 709 |
| 4. Plan of Coverage | 711 |
| C. The Law and the Problems | 712 |
| 1. From <i>Swift</i> to <i>Erie</i> | 712 |
| <i>Erie Railroad Co. v. Tompkins</i> | 717 |
| 2. Enclaves of Federal Common Lawmaking Power Derived from Constitutional Jurisdiction and Structure | 723 |
| a. Admiralty | 724 |
| b. Disputes Between States | 725 |
| c. Foreign Relations | 726 |
| 3. An Enclave of Federal Common Law to Protect the Proprietary Interests of the United States | 727 |
| <i>Clearfield Trust Co. v. United States</i> | 728 |
| <i>United States v. Kimbell Foods, Inc.</i> | 733 |
| <i>Boyle v. United Technologies Corporation</i> | 744 |
| 4. Congressional Directives on Choosing the Applicable Rule of Decision | 752 |
| a. Preempting, “Saving,” and Adopting of State Law | 753 |
| b. Express Authorization of Federal Common Lawmaking | 754 |
| c. Implied Authorization of Federal Common Lawmaking | 755 |
| 5. Federal Court Authority to Develop Remedial Provisions for the Enforcement of Federal Statutes | 757 |
| a. Statutes of Limitation | 758 |
| b. Implied Causes of Action | 759 |

| | |
|--|-----|
| 6. Federal Court Authority to Develop “Constitutional Common Law” Rules | 771 |
| a. Before <i>Bivens</i> | 772 |
| b. From <i>Bivens</i> to <i>Carlson</i> | 774 |
| <i>Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics</i> | 774 |
| c. The Contraction of Implied Constitutional Remedies After <i>Carlson</i> | 790 |
| <i>Wilkie v. Robbins</i> | 793 |
| d. Concluding Observations on <i>Bivens</i> Remedies | 799 |
| D. Some Additional Problems | 800 |

CHAPTER 12

The Original Jurisdiction of the Supreme Court and Appellate Jurisdiction in the Federal Courts

| | |
|---|-----|
| A. A Reference Problem | 803 |
| B. Context and Background | 805 |
| C. The Law and Problems | 805 |
| 1. Supreme Court Original Jurisdiction | 805 |
| 2. Supreme Court Appellate Review | 808 |
| a. Review of Final Judgments of a State’s Highest Court | 810 |
| <i>Martin v. Hunter’s Lessee</i> | 811 |
| <i>Cox Broadcasting Co. v. Cohn</i> | 824 |
| <i>Murdock v. City of Memphis</i> | 833 |
| <i>Fox Film Corp. v. Muller</i> | 842 |
| <i>Michigan v. Long</i> | 844 |
| b. Review of Lower Federal Court Decisions | 851 |
| 3. Inferior Federal Courts and the <i>Rooker-Feldman</i> Doctrine | 852 |
| <i>Rooker v. Fidelity Trust Co.</i> | 853 |
| <i>District of Columbia Court of Appeals v. Feldman</i> | 854 |
| D. Some Additional Problems | 862 |

CHAPTER 13

Habeas Corpus

| | |
|---|-----|
| A. A Reference Problem | 865 |
| B. Context and Background | 868 |
| 1. English Historical Origins and Uses of the Writ | 868 |
| 2. Early American Experience with Habeas Corpus | 869 |
| 3. Chapter Goals and Plan of Coverage | 871 |
| C. The Law and Problems | 871 |
| 1. Habeas Corpus and Federal Executive Detention | 873 |
| a. The 2004 Trilogy: <i>Rasul</i> , <i>Padilla</i> , and <i>Hamdi</i> | 874 |
| b. 2006: <i>Hamdan v. Rumsfeld</i> , 548 U.S. 557 (2006) | 878 |
| c. 2008: <i>Boumediene v. Bush</i> , 128 S. Ct. 2229 (2008) | 879 |
| <i>Boumediene v. Bush</i> | 879 |

| | |
|---|------|
| 2. Habeas Corpus and State Court Detention | 912 |
| a. Some Historical Background | 913 |
| b. The Law Under AEDPA | 915 |
| <i>Coleman v. Thompson</i> | 923 |
| <i>Teague v. Lane</i> | 942 |
| <i>Terry Williams v. Taylor</i> | 961 |
| <i>Michael Williams v. Taylor</i> | 989 |
| D. Some Additional Problems | 1005 |
| Appendix A: Transcript of Articles of Confederation | 1011 |
| Appendix B: Constitution for the United States of America | 1019 |
| Appendix C: Selected Statutes | 1035 |
| <i>Table of Cases</i> | 1067 |
| <i>Index</i> | 1075 |